STATE OF IOWA

BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD 89 OCT 11 AM 9:31

WILBUR DEVINE, JR., Appellant, and STATE OF IOWA (DEPARTMENT OF NATURAL RESOURCES), Appellee.	)	CASE NO. 89-MA-08

RULING

NOW, on this 11th day of October, 1989, the matter of the Appellant's combined Resistance to State's Appeal and Motion to Submit Briefs Only comes before the Public Employment Relations Board (PERB).

On February 6, 1989, Appellant filed an appeal with PERB pursuant to section 19A.14(1), Code of Iowa (1989), challenging the response received to a noncontract grievance he had previously filed pursuant to the uniform grievance procedure specified in the rules of the Iowa Department of Personnel (IDOP).

The State of Iowa (State), through IDOP, subsequently filed a combined Answer and Motion to Dismiss, its motion alleging Appellant's failure to state a claim upon which relief could be granted by PERB. On July 27, 1989, following the parties' presentation of oral arguments and briefs on the motion, a PERB Administrative Law Judge (ALJ) issued a recommended ruling which denied the State's motion. The State's subsequent Motion for Reconsideration of that ruling was also denied by the ALJ.

The State then filed a "Notice of Appeal to the Board" seeking our reversal of the ALJ's two previous rulings, which we will treat as a Petition for Review pursuant to PERB rule 11.8, 621 Ia. Admin. Code 11.8 (19A, 20).

The instant resistance and motion was filed by Appellant on August 22, 1989. In Division I of his filing the Appellant alleges, inter alia, that the State seeks interlocutory review of the ALJ's rulings solely for the purpose of further delaying the adjudication of the merits of his claim, which he notes have not been reached despite his filing of this proceeding approximately nine months ago. In Division II, Appellant alternatively requests that we dispense with oral arguments and direct only the filing of briefs should we allow the interlocutory review.

In considering Appellant's filing we are thus first confronted with the question of whether we are required to grant review of an ALJ's interlocutory order, and if not, whether such review should nonetheless be conducted in the instant case.

PERB's jurisdiction over noncontract grievance cases is established by section 19A.14(1), Code of Iowa (1989), which provides that an employee, if dissatisfied with the third-step response to his or her grievance, may file an appeal with this agency. That section further provides that "[t]he hearing shall be conducted in accordance with the rules of the public employment relations board and the Iowa administrative procedure Act ...."

The Administrative Procedure Act authorizes the appointment of ALJs by an agency to preside at hearings conducted pursuant to

its terms.[1] PERB has done so, and its rules governing State employee appeals of grievance decisions, such as the instant case, provide that we will appoint an ALJ to adjudicate the matter.[2]

PERB's rules further provide, consistent with the provisions of the Administrative Procedure Act, that the ALJ's decision "shall become final unless a petition for review is filed."[3] Thus, a party is clearly entitled to seek the review of an ALJ's "decision" in a case heard pursuant to section 19A.14. However, neither the Administrative Procedure Act nor PERB's rules define the word "decision" as used therein, so as to make it clear whether interlocutory rulings or orders, such as those of the ALJ which are here challenged by the State, constitute "decisions" which are independently appealable, or whether the term is limited to the ultimate decision on a case's merits, issued after an evidentiary hearing has been held.

Our research has disclosed no direct authority construing the word "decision" as it is used in sections 17A.15 and .16, nor have we previously addressed the word's meaning within the context of our rules. Consideration of alternative constructions and their effects has, however, led us to the conclusion that "decision"

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[1]See section 17A.11(1), Code of Iowa (1989).

[2]See PERB rule 11.5(1), 621 Ia. Admin. Code 11.5(1).

[3]PERB rule 11.7, 621 Ia. Admin. Code 11.7(19A, 20). See also section 17A.15(3), Code of Iowa (1989), providing that when a subordinate presiding officer (such as an ALJ) issues a decision, that decision becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of the agency within the time provided by rule.

should be viewed as relating to the ALJ's decision on the merits of a case after the conduct of an evidentiary hearing, rather than more broadly so as to encompass all rulings an ALJ may be required to make during the pendency of a proceeding.

A contrary conclusion would result in a situation where every interlocutory ruling or order of an ALJ, even those so mundane and clearly procedural as orders establishing hearing dates or discovery deadlines, would be appealable as of right to the Board. We cannot believe that such a result was intended by the legislature when it drafted the intra-agency appeal provisions of section 17A.15, and know that such was not PERB's intention when our own rules were adopted.

We believe an analogy to the practices of the Supreme Court is appropriate, since the Court's position with respect to the review of orders of the district courts directly parallels our position with respect to rulings and orders of this agency's ALJs.

Rule 2 of the Iowa Rules of Appellate Procedure governs the Supreme Court's review of interlocutory orders, and provides that a party aggrieved by an interlocutory order, including one whose objections to jurisdiction have been overruled, may apply for the grant of an appeal in advance of final judgment. That application may be granted if it is found that the ruling or decision involves substantial rights and will materially affect the final decision and that a determination of its correctness before trial on the merits will better serve the interests of justice.[4] Such rules are

[4]See Ia. R. App. P. 2(a).

designed to prevent unnecessary litigation on appeal by requiring that all questions that can be so presented are determined in a single appeal.[5]

Appellate courts have long favored uninterrupted proceedings at the trial court level, with a single and complete review, so as to avoid the delay, inconvenience and expense often inherent in piecemeal adjudications. We believe that considerations of efficiency and economy have equal applicability in the field of administrative law and procedure.

The proper exercise of discretion to review interlocutory orders has the potential to promote efficiency in administrative adjudications and the prompt submission of claims, thus better serving the interests of administrative justice. For instance, the grant of an interlocutory review of an ALJ ruling sustaining a motion which is partially dispositive of a case, while inevitably delaying the issuance of the ALJ's decision on the merits, may actually increase efficiency since if no interlocutory review was made and the ALJ's ruling was later reversed after a hearing on the merits, a new hearing would likely be required. Conversely, the interlocutory review of an ALJ's denial of such a motion creates the undesirable effect of delay and piecemeal adjudication and does not eliminate the need for the evidentiary hearing for even if the ALJ's ruling is reversed on an interlocutory basis, a hearing

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[5]See Ruth & Clark, Inc. v. Emery, 235 Iowa 131, 15 N.W.2d 896 (1944).

before the ALJ on the merits of the surviving portion of the case will still be required.

Nor should the denial of an interlocutory review by the Board work a denial of a litigant's opportunity to ultimately secure a review of the challenged ruling. In the judicial system, the refusal to grant an interlocutory review does not amount to an affirmance of the challenged ruling so as to preclude a subsequent determination, during an appeal from the final judgement, that the interlocutory ruling was erroneous.[6] We see no reason why the same rule should not apply to review proceedings before this agency.

Consequently, we hold that interlocutory rulings and orders of an ALJ are not "decisions" within the meaning of the Administrative Procedure Act and our rules, and are not appealable to us as of right prior to the issuance of the ALJ's decision on the merits. Instead, we may review such rulings, upon application of a party to the proceeding in which the ruling or order is entered, should we find that the conditions specified by rule 2(a) of the Iowa Rules of Appellate Procedure are present.

Turning to the application of our holding to the instant case, we note that although the State's Motion to Dismiss Appellant's appeal prays for dismissal of the entire appeal due to Appellant's allegations of violations of chapter 19B of the Code of Iowa,

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[6]See, e.g., Banco Mortgage Co. v. Steil, 351 N.W.2d 784 (Iowa 1984); Deere Mfg. Co. v. Zeiner, 247 Iowa 1364, 79 N.W.2d 403 (1956).

rather than chapter 19A violations,[7] our examination of the Appellant's filing reveals that the Appellant has clearly alleged a violation of section 19A.18. The State's motion must thus be viewed as no more than a motion to dismiss that portion of the appeal dealing with alleged chapter 19B and 19B-related rules violations, rather than the entirety of the appeal. Consequently, even had the ALJ granted the State's motion, or were we to reverse her determination on interlocutory review, the Appellant would still be entitled to an evidentiary hearing concerning his claim of a section 19A.18 violation. The State's motion, even if granted, would thus not be totally dispositive of the case.

Under these circumstances, we do not believe that the grant of an interlocutory review of the ALJ's rulings will better serve the interests of justice, one of the conditions specified in Iowa Rule of Appellate Procedure 2, which we have today adopted for our use in determining whether an interlocutory appeal may be granted. Instead, we believe it more efficient and more apt to serve the goal of prompt and just dispute resolution to promptly return the case to the ALJ for her scheduling and conduct of a hearing upon the merits of Appellant's claims. As indicated previously, this does not deprive the State of the opportunity to ultimately seek a review of the ALJ's interlocutory rulings, but merely delays such a review until such time as the ALJ has issued her decision on the

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[7]Section 19A.14(1), Code of Iowa (1989), upon which our jurisdiction is based, provides, in relevant part, that decisions of PERB in grievance appeals such as the instant case, "shall be based upon a standard of substantial compliance with this chapter and the rules of the department of personnel." (Emphasis added.)

merits. Should either party then obtain a review of that decision pursuant to PERB rule 11.8, the ALJ's interlocutory rulings may then be scrutinized.[8]

Having reached this disposition on the resisted Petition for Review filed by the State, it is unnecessary for us to address Appellant's motion to dispense with oral arguments on the interlocutory review of the challenged rulings.

IT IS THEREFORE ORDERED that the State's Petition for Review of the ALJ's rulings on the State's Motion to Dismiss and Motion for Reconsideration be and is hereby DENIED.

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[8]It is unfortunate that the ALJ's ruling on the State's motion was erroneously entitled "Recommended Ruling on Motion to Dismiss", for that caption likely signaled to the State that the ALJ considered her ruling to be appealable as of right pursuant to chapter 9 of our rules, 621 Ia. Admin. Code, ch. 9. That the State so interpreted the ruling on its motion is further evidenced by its filing of a "Notice of Appeal" as required by chapter 9, rather than a Petition for Review, as required by chapter 11, and by its recitation of grounds specified in rule 9.2(1), rather than either of those set forth in rule 11.8(2). However, even if this was a case in which the decision was reviewable under chapter 9 rather than chapter 11, our holding and the reasoning therefor would be equally applicable. Even in those cases, we believe there is no absolute right to obtain review of interlocutory rulings, but merely a right to seek such review, which application we will grant or deny after consideration of the particular case and the presence of the conditions specified in rule 2 of the Iowa Rules of Appellate Procedure.

IT IS FURTHER ORDERED that this case be and is hereby remanded to the ALJ, for the scheduling and conduct of a hearing upon the merits of Appellant's claims.

PUBLIC EMPLOYMENT RELATIONS BOARD

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